

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**BRADLEY BUEHLHORN  
and LOIS HESS,**

**Relators,**

**v.**

**MARV-O-LUS MANUFACTURING  
COMPANY,**

**Defendant.**

**No. 10-0567-DRH**

**ORDER**

**HERNDON, Chief Judge:**

This matter comes before the Court for case management. On September 16, 2011, President Barack Obama signed into law the Leahy-Smith America Invents Act. Leahy-Smith America Invents Act, Pub. L. No. 112-29 (125 Stat. 284) (Sep.16, 2011). Part of this new legislation amends 35 U.S.C. § 292, specifically limiting, among other things, who can sue for the penalty authorized by 35 U.S.C. § 292(a) to the United States. *Id.* Prior to the amendment, any person could sue for the penalty. See 35 U.S.C. § 292(b). Now, however, “[o]nly the United States may sue for the penalty authorized by this subsection.” Leahy-Smith America Invents Act, Pub. L. No. 112-29 (125 Stat. 284) (Sep.16, 2011). Nevertheless, “[a] person who has suffered a competitive injury as a result of a violation of this section may file a civil action in a district court of the United States for recovery of damages adequate to compensate for the injury.” *Id.* The new legislation also amended 35 U.S.C. § 292 by adding the

following subsection: “(c) The marking of a product, in a manner described in subsection (a), with matter relating to a patent that covered that product but has expired is not a violation of this section.” *Id.* “The amendments made by this subsection shall apply to all cases, without exception, that are pending on, or commenced on or after, the date of the enactment of this Act.” *Id.*

Here, plaintiffs brought this action suing for the penalty authorized by 35 U.S.C. § 292(a). As set forth above, now only the United States may sue for that penalty. Accordingly, it is ordered that plaintiffs shall show cause why this case should not be dismissed no later than fourteen days after the date of entry of this order (on or before October 5, 2011). Failure to comply with this Order shall result in dismissal of this action.

**IT IS SO ORDERED.**

Signed this 20th day of September, 2011.

*David R. Herndon*



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**Chief Judge  
United States District Court**